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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re TRACY F. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

TRACY F.,

Defendant and Appellant.

B216670

(Los Angeles County
Super. Ct. No. CK63925)

APPEAL from an order of the Superior Court of Los Angeles County,
Valerie Skeba, Referee. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant
and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County
Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Tracy F. (mother) appeals an order terminating parental rights with respect to four of mother's children, Tracy F., Destiny F., Alisha O. and J.C. Mother contends the beneficial parental relationship exception and the sibling bond exception apply in this case. (Welf. & Inst. Code, § 366.26, subds. (c)(1)(B)(i) and (c)(1)(B)(v).)¹ We reject mother's contentions and affirm the order terminating mother's parental rights.

FACTS AND PROCEDURAL BACKGROUND

1. Detention.

In February of 2006, the Department of Children and Family Services (the Department) received a referral alleging general neglect of one of mother's seven children. The family was not located until May 8, 2006, when the Department received a referral indicating mother and the children were living in an unsafe home in Palmdale. A social worker went to the home later that day and found mother and the children had moved.

On May 31, 2006, Department received a referral alleging general neglect of the children who were living in a motel. Mother refused to speak to the social worker. The social worker returned days later to find mother no longer was registered at the motel.

On July 12, 2006, an officer participating in a police task force operation saw a man with a gun standing in the window of a residence in Palmdale. The officer entered the home and found it was occupied by mother and three other women, 10 or 12 children and three males. A social worker found the home was filthy, it had no electricity or water, there was little food and there was an open refrigerator in the backyard. The home had exposed wires and nails and the children were sleeping in the garage. Mother rented rooms in the home to a drug trafficker and three mothers with their infants. Mother acknowledged she and her boyfriend have domestic violence issues and that he has been arrested for drug use and trafficking in the past. Mother acknowledged using

¹ Subsequent unspecified statutory references are to the Welfare and Institutions Code.

cocaine in the past and stated she and the children moved into the house about two months ago. Mother refused to sign anything and refused to drug test.

In interviews, nine-year-old Miguel F. stated mother's ex-boyfriend pistol whipped mother on the back of the head and that mother would not let Miguel attend school because she was afraid the Department would detain him.

Mother's neighbor stated mother is gang affiliated, uses methamphetamine with her boyfriend and is four months pregnant. Mother does not supervise the children who are out all night.

The children were taken into protective custody. Tracy, Destiny and Alisha were placed in the foster home of Mr. and Mrs. J. Mother was granted monitored visitation. Mother's oldest child, Christopher, who was one week shy of his 18th birthday, was permitted to remain with mother. Seventeen-year old Robert was placed in foster care. Fifteen-year-old Arianna could not be located and a protective custody warrant was issued for her detention. The Department noted mother and the children are very close and that mother can be very resourceful.

Mother's prior child welfare history included unfounded referrals in 1992, 1993, 1994 and 1996. In 2002, mother entered into a voluntary family maintenance agreement for caretaker absence. In 2005, mother was the subject of an investigation for general neglect but the case was closed because the Department was unable to locate mother. Mother's criminal history included a conviction of welfare fraud and perjury in 2003.

2. J.C. is born drug exposed.

In November of 2006 mother gave birth to J.C. Mother had not obtained any prenatal care and mother tested positive for methamphetamine. The juvenile court ordered J.C. detained and granted mother monitored visitation.

In December of 2006, the foster family agency (FFA) reported Robert refused to return to his foster placement. The report indicated Robert was angry, unhappy and moody the entire time he was in placement. Although Robert appeared happy during family visits, "he would frequently withdraw as though [the other siblings] were not

there. [A social worker] once observed a visit where he laid down and slept while his younger siblings waited for their mother to arrive.”

A report filed in January of 2007, indicated mother had not enrolled in counseling and frequently failed to appear for drug testing. Miguel’s foster mother indicated mother told Miguel to go to court and retract his prior statements regarding domestic violence in the home.

3. The sustained petitions.

On April 11, 2007, dependency petitions were sustained as amended to allege mother has a history of substance abuse which periodically interferes with her ability to provide regular care and supervision, and mother and her male companion have a history of domestic violence which places the children at risk.

The juvenile court granted mother family reunification services and ordered mother to participate in parenting class and individual counseling to address domestic violence and substance abuse.

4. Mother fails to comply with the case plan.

On July 9, 2007, the Department reported mother has attempted to meet with the children in unmonitored settings. Further, mother yells at the foster parents, interrogates the children regarding all aspects of their care and encourages the children to run away from placement. The Department asked mother to develop a positive relationship with the foster parents but mother has refused. Additionally, many of the service workers have experienced aggressive tactics and abusive language from mother’s older children and family friends. Nonetheless, the Department described mother’s twice weekly monitored visits with the children as positive and the family as loving and cohesive.

A social report prepared for September 17, 2007, indicated mother was arrested on February 23, 2007. Miguel was placed in a new foster home due to failure to obey rules and problems at school. The report indicated visitation was generally positive but mother focused her attention on the infant, J.C., and the children played by themselves for the most part. Mother and the children whisper to each other or turn the television volume up so the monitor cannot hear their conversations. Mother consistently tells the children

they are going home. However, mother has not completed any court ordered programs and she fails to appear for drug testing. The social worker noticed the children's behavior changes when they are in the presence of mother and her older children. It was reported that Miguel is best behaved when he does not speak to mother for some time.

In October of 2007, mother was terminated from her drug program. In November of 2007, the Department reported mother has been asleep at visits on two or three occasions and she allows the children to run free during the visits. Mother relies on the older children to care for the younger children while mother cares for the baby. Mother does not get up from the couch during the visit.

On January 14, 2008, the juvenile court terminated family reunification services.

5. Mother's visitation; hostility toward service workers.

A May 2008 social report indicated Miguel continues to have emotional issues related to disappointment with mother's inconsistent visitation. Commencing February 19, 2008, the visits were changed to once a week because mother missed many visits, causing the children to cry from disappointment. At times, the children acted as though they were not bothered by mother's failure to appear for visits. Other times, the children said they did not want to attend the visits. The children expressed their disappointment through negative behavior. Destiny misbehaved at school the day after a missed visit.

In April of 2008, the FFA reported the visits were becoming more hostile and disruptive and the case was being discussed with the children by mother and the older siblings. The Department reported mother and the older siblings "make everyone uncomfortable with their rudeness and threatening manners." The social worker has been cursed by the older siblings and has received threatening phone calls from Arianna, the sibling who remains AWOL, who stated in a voice message that she knows where the social worker lives and was going to get her. The monitored visits deteriorated to the point the FFA workers and the foster parents did not feel safe. Further, recent visits have been very upsetting to the children. As a result, commencing in May of 2008, family visits took place at the Department office in Palmdale.

Mr. and Mrs. J., the foster parents of Tracy, Destiny and Alisha, expressed strong objections to the children having further contact with mother and older siblings. Mr. and Mrs. J. reported negative behavior by mother and the older siblings in the presence of the children before and after visits. Additionally, mother and her adult sons display anger toward the visitation monitors and speak to the staff and foster parents in an angry and hostile tone. The Department reported it was emotionally harmful to subject the children to such a hostile and intense environment.

6. Mr. and Mrs. M. prepare to adopt the four youngest children; mother is sentenced to state prison.

In September of 2007, Alisha's paternal uncle and aunt, Mr. and Mrs. M., indicated they wished to adopt their niece, Alisha, and J.C. The Department decided to leave Tracy, Destiny and Alisha in foster care with Mrs. J. and J.C. in her foster home and to arrange overnight and weekend visits with Mr. and Mrs. M. A home study approving placement of Alisha in the home of Mr. and Mrs. M. was completed on October 16, 2007.

In November of 2007, Alisha commenced overnight visitation with Mr. and Mrs. M. Tracy and Destiny also visited Mr. and Mrs. M. overnight in December, February and twice in March of 2008. J.C. visited Mr. and Mrs. M. with her sisters commencing in April of 2008.

On June 12, 2008, the attorney for Tracy, Destiny and Alisha requested placement of the three girls and J.C. in the home of Mr. and Mrs. M.

A social report filed July 14, 2008 indicated Mr. and Mrs. M. continued to visit with the four girls and indicated they would be willing to maintain visitation with the girls' sibling, Miguel, should they be allowed to adopt the girls.

A social report filed August 27, 2008, indicated mother had been convicted of burglary and grand theft and would be sentenced to state prison. The report noted Mr. and Mrs. M. have bonded with Alisha's siblings, Tracy, Destiny and J.C., and Mr. and Mrs. M. now wish to adopt all four girls.

A social report filed January 12, 2009, indicated Tracy, Destiny, Alisha and J.C. had been placed in the home of Mr. and Mrs. M. The report indicated the M.'s home study had now been approved for all four children.

7. The permanency planning hearing.

At the permanency planning hearing, mother testified Tracy, Destiny and Alisha were 5 years, 4 years and 8 months of age, respectively, when they were detained in 2006, mother was the sole provider for the children and each of the children previously had lived exclusively with mother. In mother's opinion, the children were bonded to mother and their older siblings. Mother testified, "We were there for each other when it was hard times" Mother has not visited in the past year because she has been incarcerated. Mother sends the children cards and letters but the children do not respond. Mother indicated that, during the visits at the FFA office, mother and the children spent "quality time with each other." Mother fed the children and changed the baby's diaper. Mother asserted her interaction with the children was always positive. Mother believed Tracy, Destiny, Alisha and J.C. were bonded to mother in a physical and spiritual way. Mother believed termination of parental rights would be detrimental to the children because they "are suffering." Mother requested guardianship rather than adoption for the girls.

The juvenile court asked whether Mr. and Mrs. M. would maintain sibling visits with the older siblings. The children's counsel indicated the M.'s were not willing to maintain a relationship with the older siblings and, in counsel's estimation, "the girls do not have that much of a relationship with their older siblings [¶] They do have . . . a relationship with Miguel." However, Miguel has chosen legal guardianship as his permanent plan.

Counsel for J.C. indicated J.C. has never resided with Miguel and her relationship with Miguel did not outweigh the benefit of adoption.

The juvenile court found the parental relationship exception did not apply because mother had not had recent contact with the children. Further, even if recent contact had

been shown, the children needed stability and it would not be in the best interests of the children to maintain the parental relationship.

Regarding the sibling relationship exception, the juvenile court noted Miguel had opted for legal guardianship and the youngest child, J.C., did not have a substantial relationship with her older siblings, who were now adults. The juvenile court ordered a referral to the Consortium for Children to see if post-adoption visitation could be arranged. The juvenile court noted the older siblings had not requested visitation with the girls and found the current assertion of the sibling relationship exception was “fueled by mother’s desire to not have her parental rights terminated, rather than any real factual belief that there is a relationship. If there was, I would have been ordering visitation a long time ago. So I don’t believe [the] sibling relationship [exception] applies”

The juvenile court terminated parental rights with respect to Tracy, Destiny, Alisha and J.C. and ordered legal guardianship for Miguel.

CONTENTIONS

Mother contends her parental rights should not have been terminated because the parental relationship and the sibling bond exceptions applied in this case. (§ 366.26, subds. (c)(1)(B)(i) and (c)(1)(B)(v).)

DISCUSSION

1. *Substantial evidence supports the juvenile court’s finding the beneficial parent-child relationship exception did not apply.*

a. *General principles.*

At a permanency plan hearing there is a strong preference for adoption over other permanent plans. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) Adoption is the Legislature’s first choice when reunification efforts have failed because it gives the child the best chance at a full emotional commitment from a responsible caretaker. (*Ibid.*) After the juvenile court determines a child is likely to be adopted, the burden shifts to the parent to show termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.) Section 366.26, subdivision (c)(1)(B)(i), provides an

exception to termination of parental rights when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

“ ‘[B]enefit from continuing the . . . relationship’ ” means “ ‘the [parent-child] relationship’ . . . promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Where the parent has continued to regularly visit and contact the child, and the child has maintained or developed a significant, positive, emotional attachment to the parent, “the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Ibid.*)

The parent has the burden of showing both regular visitation and contact and benefit to the child in maintaining the parent-child relationship. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) “Interaction between a natural parent and child will always confer some incidental benefit to the child. . . . The [beneficial] relationship arises from day-to-day interaction, companionship and shared experiences.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

We review the findings of the juvenile court under the substantial evidence standard. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)²

² Other cases have applied the abuse of discretion standards to review the applicability of the parental relationship exception. (See *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) There appears to be little practical difference between the two standards of review in this

b. *Mother's arguments.*

Mother contends the evidence showed Tracy, Destiny, Alisha and J.C. were fiercely bonded to mother. Mother asserts the positive accounts of mother's visits with the girls demonstrate that terminating parental rights would deprive the children of a substantial, positive emotional attachment such that the children would be greatly harmed. Mother argues she and the girls shared emotionally significant relationships and mother visited to the best of her ability. Even after mother's visitation was reduced to once per week, the visitation monitor wrote mother is "a wonderful parent, who exhibits love and affection for the children."

The FFA also recognized the family had a strong bond and all the children appeared to be very close. The FFA described the visits as warm and noted an atmosphere of love and kindness among the family members. Mother asserts her visitation must be considered in the context of the limited visitation she was permitted. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537-1538.) Mother sent the children cards and letters while she was incarcerated, despite receiving no response from the children. Mother attributes the acting out behavior of the children after missed visits with mother to the strong bond between mother and children. Mother concludes the record shows a significant parent-child relationship despite the lack of day-to-day contact such that the order terminating parental rights must be reversed and the case remanded with directions to enter a non-adoptive permanent plan.

c. *Resolution.*

After the children were detained, the juvenile court granted mother twice weekly monitored visitation with the girls. Mother's visits initially were described as positive and the children looked forward to visits with mother. However, mother so frequently disappointed the children that the visits became a source of disruption for the children. On February 19, 2008, mother's visitation was reduced to once a week because mother missed many visits. Further, mother did not visit the children at all in the year preceding

context. Because the parties do not argue otherwise, we apply the substantial evidence standard of review.

the permanency planning hearing due to her incarceration. Thus, mother failed to demonstrate regular visitation and contact with the children.

Additionally, the record shows the relationship between mother and children was not beneficial to the children in that the children were distressed by mother's failure to appear for visits and they would misbehave after canceled visits. Also, mother acted inappropriately at visits by discussing the case with the children and encouraging them to run away from placement. During visits, mother was seen to be asleep and she allowed the children to run free.

Moreover, Tracy, Destiny and Alisha had not lived with mother for three years and when they did live with mother, they were exposed to drug trafficking and domestic violence and they endured filthy and unsafe living conditions. J.C. had never lived with mother. On the other hand, the girls were happy and healthy in the care of Mr. and Mrs. M.

Thus, substantial evidence supports the juvenile court's finding the parent-child relationship did not promote the well-being of the children to such a degree as to outweigh the benefit of a permanent home with new, adoptive parents. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Mother seeks to avoid this result by arguing her case is similar to *In re S.B.* (2008) 164 Cal.App.4th 289, 293, *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207, and *In re Brandon C.*, *supra*, 71 Cal.App.4th at p. 1537, all of which found continuation of the parental relationship would be beneficial to the child. However, in each of these cases the parent complied with the case plan and maintained a parental relationship with the child through consistent contact and visitation. Here, mother failed to comply with the case plan, she never advanced to unmonitored visitation, she failed to visit consistently and her inconsistent visitation caused the children emotional turmoil.

In sum, we conclude the juvenile court correctly determined the children's interest in continuing a relationship with mother did not outweigh the benefit of a stable adoptive placement.

2. *Substantial evidence supports the juvenile court's finding the sibling relationship exception did not apply.*

a. *General principles.*

The sibling relationship exception prevents termination of parental rights when “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).)

The focus of this exception is on the welfare of the child who is being considered for adoption, not that of the sibling. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 55.) Like the beneficial parental relationship exception, the party seeking to establish the existence of the sibling relationship exception has the burden of producing evidence on the issue. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 252.) On appeal, we review the juvenile court’s finding for substantial evidence. (*Id.* at pp. 250-251.)

b. *Mother’s arguments.*

Mother contends termination of parental rights would substantially interfere with the beneficial sibling relationship between Tracy, Destiny, Alisha and J.C., on one hand, and their older siblings, Christopher and Robert, on the other. Mother claims severance of the girls’ ties with their older brothers would be devastating to the long-term emotional well-being of the children. (*In re Valerie A.* (2006) 139 Cal.App.4th 1519, 1524.)

Mother notes that despite the strong bond between the girls and their older brothers, the prospective adoptive family is opposed to continued contact between the girls and Christopher and Robert. Mother observes that before they were detained, Tracy,

Destiny and Alisha lived with their brothers. Further, for more than two years after the children were detained, Christopher and Robert visited the children regularly. The FFA reported Destiny was especially close to Christopher and was also close to Robert, and that Alisha appeared to have a close bond with Christopher and she usually sat on his lap or close to him during visits.

Mother concludes termination of parental rights will force Tracy, Destiny, Alisha and J.C. to endure a lifetime without the mutual love and affection of Christopher and Robert. Mother asserts this court must apply the sibling relationship exception to prevent this miscarriage of justice.

c. Resolution.

Tracy, Destiny and Alisha all were under the age of six years when they were detained in July of 2006. Tracy, Destiny and Alisha have not resided with Christopher or Robert since the date of their detention and J.C. has never lived with Christopher or Robert. Reports of the visitation indicated Robert frequently was withdrawn during the visits and he slept while the children played. Additionally, it was reported the younger children mostly played alone. After mother was incarcerated, there is no indication Christopher or Robert continued to visit the girls. Based on this evidence, the juvenile court properly could conclude it was unlikely any of the girls shared significant common experiences or had close and strong bonds with Christopher or Robert. Indeed, at the permanency planning hearing the attorney for Tracy, Destiny and Alisha stated the girls did not have a relationship with Christopher or Robert.

Further, the juvenile court referred the case to Consortium for Children to see if a post-adoption visitation agreement could be arranged to ameliorate the separation of the siblings. (See *In re Celine R.*, *supra*, 31 Cal.4th at p. 55.) Finally, whatever detriment termination of the sibling relationships might entail for the girls, it was outweighed by the benefit they will gain through the permanency and stability of adoption.

We therefore conclude the juvenile court properly found the sibling relationship exception did not prevent termination of parental rights in this case.

DISPOSITION

The order of the juvenile court under review is affirmed.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.